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DEC 12 2006

OFFICE OF PETITIONS

In re Patent No. 7,078,376 : DECISION ON REQUEST
Lawrence Thompson : FOR RECONSIDERATION OF
Application No. 09/637,962 : PATENT TERM ADJUSTMENT
Filed: August 11, 2000 : and
Atty Docket No. ELX-5704 (US) : NOTICE OF INTENT TO ISSUE
BXTR 9005 : CERTIFICATE OF CORRECTION

This is a decision on the "PETITION FOR PATENT TERM ADJUSTMENT PURSUANT TO 37 CFR §1.705(d)" filed July 18, 2006. Patentees request that the patent term adjustment indicated in the patent be corrected from six hundred seventy-two (672) to eight hundred fifteen (815) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED** to the extent indicated herein.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of six hundred ninety-four (694) days.

On July 18, 2006, the above-identified application matured into U.S. Patent No. 7,078,376. The instant request for reconsideration considered filed July 18, 2006 was timely filed within 2 months of the date the patent issued. See § 1.705(d). The Patent issued with a revised Patent Term Adjustment of 672 Patentee disputes the reductions totaling 143 days entered after the mailing of the Notice of Allowance.

A review of the record confirms that after the mailing of the Notice of Allowance, the patent term adjustment was further reduced: 1) by 1 day, pursuant to 1.704(b), for the Office receiving the Issue Fee payment on March 7, 2005, three months and 1 day after the mailing of the Notice of Allowance on December 6, 2005, 2) by 120 days, pursuant to 1.704(c)(10) for the filing of a miscellaneous incoming letter on March 29, 2005, and 3) by 22 days, pursuant to 1.704(c)(10) for the filing of a miscellaneous incoming letter on March 7, 2005.

Patentee's arguments and evidence have been considered and found persuasive to an extent. The entry of the above-noted reduction of 22 days is not warranted. By Official Gazette Notice dated June 26, 2001, the Director has advised applicants and patentees that the filing after the mailing of a Notice of Allowance of (1) Fee(s) Transmittal (PTOL- 85B); (2) Power of Attorney; (3) Power to Inspect; (4) Change of Address; (5) Change of Status (small/not small entity status); (6) a response to the examiner's reasons for allowance or a request to correct an error or omission in the "Notice of Allowance" or "Notice of Allowability;" and (7) letters related to government interests (e.g., those between NASA and the Office) will not be considered a "failure to engage in reasonable efforts" to conclude processing or examination of an application and will not result in reduction of a patent term adjustment pursuant to 37 CFR 1.704(c)(10) Clarification of 37 CFR 1.704(c)(10) - Reduction of Patent Term Adjustment for Certain Types of Papers Filed After a Notice of Allowance, 1247 OG 111 (June 26, 2001). See MPEP 2732. A review of the papers filed March 7, 2005 reveals that they are of the type not to be considered a failure to engage within the meaning of § 1.704(c)(10).

However, a reduction is warranted, pursuant to 1.704(b), for the filing of the Issue Fee transmittal on March 7, 2005. In this regard, applicants' attention is directed to 37 CFR 1.703(f), which provides that "[t]he date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation" of patent term adjustment. See also, Comment 10, *Changes to Implement Patent Term Adjustment under Twenty-Year Patent Term; Final Rule*, 65 Fed. Reg. 54366 (September 18, 2000). The Issue Fee transmittal was received in the Office, three months and 1 day, after the mailing of the Notice of Allowance on December 6, 2004. Thus, the 1 day reduction is warranted for applicant taking in excess of 3 months to respond to the Notice of Allowance.

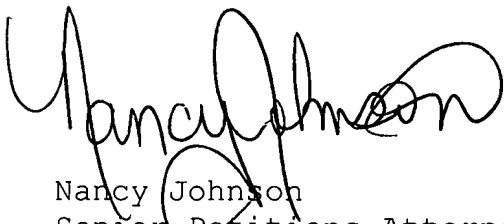
Moreover, a review of the application record confirms that the reduction of 120 days is properly based on the filing after allowance of formal drawings on March 29, 2005.

In view thereof, the patent term adjustment indicated on the patent should have been six hundred ninety-four **(694)** days.

The \$200.00 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 19-1345, as authorized. No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by six hundred ninety-four **(694)** days.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3219.

A handwritten signature in black ink, appearing to read "Nancy Johnson", with a large, stylized flourish at the end.

Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,078,376 B1

DATED : July 18, 2006

INVENTOR(S) : Thompson

DRAFT

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by (672) days

Delete the phrase "by 672" and insert – by 694 days--